

Fair Employment Law and Family Medical Leave Act Remedies at a Glance

A Summary of Remedies Available under State and Federal Laws

This document is for general informational purposes only, is subject to change, and is not to be considered legal advice. Individuals who wish to obtain legal advice in a particular matter should consult an attorney. In addition, individuals who desire more information about the state laws may contact the Equal Rights Division of the State of Wisconsin at (608) 266-6860 in Madison or (414) 227-4384 in Milwaukee. Individuals who desire more information about the federal fair employment laws referenced should contact the U.S. Equal Employment Opportunity Commission at (414) 297-1111. Persons seeking more information on the federal Family & Medical Leave Act may call the Wage & Hour Division of the U.S. Labor Department at (608) 264-5221.

Fair Employment Remedies

| | |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| WFEL | Section 111.31 of the Wisconsin Statutes and is referred to as the Wisconsin Fair Employment Law (or as the Wisconsin Fair Employment Act or WFEA) |
| Title VII | 42 U.S.C. section 2000e and is referred to as Title VII of the Civil Rights Act of 1964(as amended) |
| ADA | 42 U.S.C. section 12101 and is referred to as the Americans with Disabilities Act of 1990 (as amended) |
| ADEA | 29 U.S.C. section 621 and is referred to as the Age Discrimination in Employment Act of 1967 (as amended) |
| EPA | 29 U.S.C. section 206 (d) and is referred to as the Equal Pay Act (it is contained as part of the Fair Labor Standards Act, 29 U.S.C. sections 201) |

| y = available; n = not available | Wisconsin | Federal | | | |
|---------------------------------------------------|-----------|-----------|-----|------|-----|
| | WFEL | Title VII | ADA | ADEA | EPA |
| Backpay | y | y | y | y | y |
| Front Pay | (a) | y | y | y | (b) |
| Interest | y | y | y | y | y |
| Reinstatement | y | y | y | y | (b) |
| Attorney Fees and Costs | y | y | y | y | y |
| Compensatory Damages for Emotional Harm and so on | n | y | y | n | n |
| Punitive Damages | n | y | y | n | n |
| Liquidated Damages | n | n | n | y | y |
| Other Remedies | y | y | y | y | y |

(a) Front pay instead of reinstatement can be awarded under the WFEL in retaliation cases brought under section 111.322 (2m), Wisconsin Statutes. Whether front pay instead of reinstatement could be awarded for retaliation claims under section 111.322 (3), Wisconsin Statutes and/or for other discrimination claims under the WFEL is not yet settled by case law.

(b) Claims under the federal EPA (Equal Pay Act) ordinarily involve a wage differential; however, the EPA also has a retaliation prohibition and reinstatement or front pay is possible remedy for unlawful retaliation (where a discharge is involved).

The item “**Liquidated Damages**” on the chart generally refers to a **doubling** of the compensation that the person would otherwise be entitled to under the ADEA or the EPA. Even if a person establishes a violation of the ADEA, the person is not automatically entitled to the liquidated damages (or doubling) unless a certain additional standard of proof is met. Under the EPA, even if a person has established a violation, the employer may avoid the liquidated damages if it can present the required “good-faith” defense.

The item “**Other Remedies**” on the chart includes such remedies as cease and desist orders, requiring an employer to provide training to supervisors and/or employees, and so on.

The items “Compensatory Damages” (for emotional harm and so on) and “Punitive Damages” under Title VII are generally subject to combined caps of total of the compensatory and punitive damages based on employer size as follows:

| Number of Employees | Cap |
|---------------------|-----------|
| 15-100 | \$50,000 |
| 101-200 | \$100,000 |
| 201-500 | \$200,000 |
| 501 or more | \$300,000 |

There is no cap, however, for race discrimination cases (or national origin discrimination cases if the national origin claim involves ancestry or ethnic characteristics) which may be pursued under 42 U.S.C. sec. 1981.

| | Wisconsin | Federal | | | |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|------------|------------|------------|
| | WFEL | Title VII | ADA | ADEA | EPA |
| Protected Classes | age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard or state defense force or any reserve component of the military forces of the U. S. or this state, use or nonuse of lawful products off the employer's premises during non working hours | race, color, sex, religion, national origin | disability | age | sex |
| Administrative Hearing (appeal to Labor and Industry Review Commission and then to court) | y | n | n | n | n |
| Court Hearing (federal claims may be filed in federal or state court) | appeal to circuit court | y | y | y | y |
| Jury Trial | n | y | y | y | y |
| Class Action | n | y | y | y | y |
| Number of Employees | no minimum | 15 or more | 15 or more | 20 or more | no minimum |

For details on damages under federal law, see EEOC's Website at <http://www.eeoc.gov/policy/docs/damages.html>.

Special Note: Individuals with complaints against federal agencies regarding employment discrimination may contact the U.S. Equal Employment Opportunity Commission at (414) 297-1111 regarding applicable procedures.

Family and Medical Leave Act Remedies

Wisconsin Law

The Wisconsin Family and Medical Leave Act (section 103.10, Wisconsin Statutes, covers employers with fifty or more employees. The law is enforced administratively through the Wisconsin Equal Rights Division. In addition to those remedies for which a “y” is shown in the chart below, a separate civil court action may be brought after the administrative proceeding (including any court appeals), has been completed to recover other damages caused by a violation of the state law.

Federal Law

The federal Family and Medical Leave Act is found at 29 U.S.C. section 2611, et seq. and covers employers with 50 or more employees. A complaint may be filed with the U.S. Department of Labor and a civil court action may be filed. In addition to individual complaints, a class action may be filed.

| y = available; n = not available | Wisconsin | Federal |
|----------------------------------|-------------------|---------|
| Backpay | y | y |
| Reinstatement | y | y |
| Interest | y | y |
| Attorney Fees and Costs | y | y |
| Liquidated Damages | n | y |
| Other Damages | possibly in court | n |
| Other Remedies | y | y |

The item “**Liquidated Damages**” on the chart generally refers to a **doubling** of the compensation that the person would otherwise be entitled to under the U.S. Family and Medical Leave Act. If a person establishes a violation of the U.S. Family and Medical Leave Act, the employer may avoid liquidated damages (doubling) if it can present the required “good-faith” defense.

The item “**Other Remedies**” on the chart includes such remedies as cease and desist orders, requiring an employer to provide training to supervisors and/or employees and so on.

For more information:

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